

III. REMARKS

In the Office Action dated April 14, 2008, the Examiner indicated that Claim 27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 USC §112, second paragraph, and claims 28-30 would be allowable if rewritten in independent form, including all the limitations of the base claim and any intervening claims. The applicants gratefully acknowledge the indication of Allowability.

Drawing Objections

The Examiner has objected to the drawings as not showing every feature of the invention specified in the claims. Specifically, claim 25 recites the channel in the first portion has a greater than semicircular cross-section, and the channel in the second portion has a less than semicircular cross-section, but none of these features are shown in the drawings. Applicant has now canceled claim 25, rendering this ground of rejection moot.

Claim Rejections – 35 USC § 112

The Examiner has rejected claims 25 and 27 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 has been canceled by Applicant and, therefore, this ground of rejection as to claim 25 is moot. With regard to claim 27, the Examiner states that claim 27

recites the channel having at least a semicircular cross-section, with an adhesive being used if the cross section is of a substantially semicircular cross-section. The Examiner feels that this makes that claim indefinite since it is previously recited that the channel is at least semicircular cross-section.

Applicant requests that this ground of rejection be withdrawn, as the claim is not indefinite. The recitation of the channel having at least a semicircular cross-section means that has a semicircular or greater cross-section. Adhesive is used if it is semicircular in cross-section, and it is not used if the channel is of greater than semicircular cross-section. This seems definite to the Applicant, and Applicant invites the Examiner to telephone if this explanation does not remove the ground of rejection.

Claim Rejections – 35 USC § 103

The Examiner has rejected claims 20 – 24 as is being obvious in view of the US 6001081 to Collen. The Examiner states that the patent to Collen discloses a tubing device comprising a tubing support comprising, when closed, a curvilinear channel of substantially circular cross-section disposed therein for receiving and holding a piece of tubing (40), wherein the tube support comprises a first portion (12), and a second portion (14), with each portion comprising a channel of semicircular cross-section and being connected by hinge (16). The channels are configured to align with each other to hold the tubing between them. Figure 4 discloses that when the tube support is closed, the channels are configured to form a cylindrical channel when

aligned thus forming a curvilinear channel of substantially circular cross-section. The Examiner further states that Collen does not specifically disclose the channel contacting the piece of tubing substantially around its entire periphery. The Examiner points out however that Collen does disclose that channel dimensions as well as the radius of curvature may be changed to accommodate different sized tubing.

Applicant agrees with most statements of the Examiner thus far. However, Applicant strenuously **disagrees** with the Examiner's statement that "Additionally the size of the tubing may increase to a diameter at which time the channels would contact the tubing substantially around the entire periphery". As is clearly pointed out at column 2, lines 45 – 60 of the reference, and shown in Fig. 4, it is a key feature of the Collen device that there must be "more than sufficient clearance to accommodate this tubing".

To eliminate this clearance would materially affect the operation of the Collen device, and this is impermissible in making a ground of rejection. Therefore, it is respectfully submitted that the rejection of claims 20 – 24 as being obvious in view of Collen is in error, and claims 20 – 24 are allowable over Collen.

The Examiner next rejects claims 20 – 25 and 36 as being obvious in view of US 5916199 to Miles. The Examiner states that the patent to Miles discloses a tubing device comprising a tube support comprising, when closed, a curvilinear channel of substantially circular cross-section disposed therein for receiving and holding a piece of tubing (20), wherein the tube support comprises a first portion 58 and a second portion (70) with each portion comprising a channel of semicircular cross-section and being

connected by a hinge (48). The channels are configured to align with each other to hold the tubing in between. Figure 3 discloses channel (60) having a less than semicircular cross-section, while the mating channel (74) is greater than semicircular, thus allowing the two to be snapped and held in place prior to closing of the two pieces.

Claim 25 has been canceled. Claim 20, from which claims 23 and 24 depend, has been amended to require a weight-bearing tube support. The discussion of the weight-bearing capabilities of the present invention are discussed at many places in the specification, and are illustrated at least in Figs. 11 and 11A. Nowhere in Miles is such a capability disclosed, and, in fact, the whole "gist" of Miles is to anchor the U-shaped channel to the hand of the patient, and not to bear any weight by holding up a blood bag etc. In fact, if any tension was placed on the tubing (20) of Miles the tubing would start slipping in the holder, rather than resisting any movement.

With regard to claim 59, a weight-bearing tubing apparatus is claimed. With regard to claim 60, a channel of other than U-shape is claimed. This is nowhere shown or suggested in Miles.

With regard to claim 61, a channel which is horseshoe shaped is claimed. While the term "horseshoe" is not specifically used in the specification, it is inherent in the disclosure as being clearly shown in the drawings in at least Figs. 10, 11, 11A, 12 and 20.

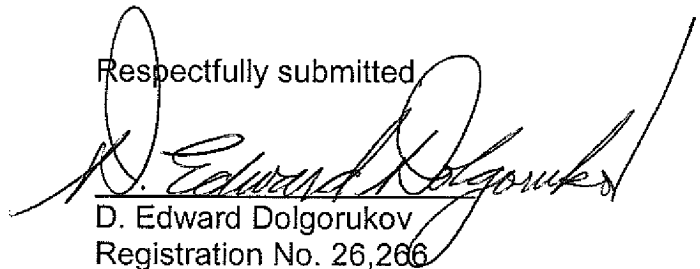
With regard to claim 62, a channel which is at least partially S-shaped is claimed. Support for this claim language can be found at least in ¶ 73 of the published application. A channel which is at least partially S-shaped is nowhere shown in Miles.

Response to Amendment

The Examiner has pointed out that the only previous amendment to the claims was an addition to claim 27. Applicant had stated that claim 27 was rewritten to include all of the limitations of claim 15 and 16. The Examiner points out that this is not entirely accurate because claim 15 included a limitation on the channel that was not placed in claim 27. Applicant has now added to this limitation to claim 27 and, therefore, claim 27 is allowable.

In view of the above amendments, and the remarks explanatory thereof, a favorable reconsideration of the present application, and the passing of this case do issue, is courteously requested.

Respectfully submitted



D. Edward Dolgorukov
Registration No. 26,266

ATTORNEYS
Marshall & Melhorn, LLC
Four SeaGate, Eighth Floor
Toledo, OH 43604
(419) 249-7146
(419) 249-7151 (Facsimile)
Dolgorukov@marshall-melhorn.com